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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BRAXTON GEORGE BERKLEY, Defendant and Appellant.	E053903 (Super.Ct.No. FMB1000296) **OPINION**

APPEAL from the Superior Court of San Bernardino County. John P. Vander Feer, Judge. Affirmed as modified.

Jerry D. Whatley and Beatrice C. Tillman, under appointments by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Steve Oetting and Lise S. Jacobson, Deputy Attorneys General, for Plaintiff and Respondent.

On June 26, 2010, a car containing defendant and his wife passed a California Highway Patrol officer traveling at 85 miles per hour in an area where the posted speed limit was 65 miles per hour. After passing the officer, defendant and his wife pulled over because she felt sick, and they both exited the car. The highway patrol officer pulled behind the car, approached defendant, and immediately determined that he was intoxicated. Defendant was found to have 0.20 percent blood alcohol content. The only issue at trial was whether defendant was driving the car at the time it was seen by the officer. The jury determined that he was and found him guilty of driving under the influence of alcohol with a blood alcohol content greater than 0.08 percent.

Defendant now claims on appeal as follows:

1. The trial court violated his rights to due process by instructing the jury on the fabrication of evidence (CALCRIM No. 371), which was not supported by the evidence.

2. Instruction with CALCRIM No. 371 lowered the People's burden of proof by instructing the jury that they could convict based only on evidence that both defendant and his wife fabricated evidence.

3. The untimely disclosure of material evidence infringed on his right to present a defense and to a fair trial.

4. His sentence on driving with a blood alcohol content greater than .08 percent should be stayed pursuant to Penal Code section 654.

We agree with the last contention and will order the sentence modified. Otherwise, we affirm the judgment.

I

PROCEDURAL BACKGROUND

A jury found defendant found guilty of felony driving under the influence of alcohol (DUI) (Veh. Code, § 23152, subd. (a); count 1) and driving with a blood alcohol content of 0.08 percent or greater (Veh. Code, § 23152, subd. (b); count 2). In a bifurcated court trial, after waiving his rights to a jury trial, the trial court found as to both counts that defendant had a prior DUI conviction within the meaning of Vehicle Code sections 23550 and 23550.5. In addition, the trial court found that defendant had suffered a prior felony conviction (Pen. Code, § 667, subds. (b)-(i))[1] and had served a prior prison term (§ 667.5, subd. (b)) within the meaning of the three strikes law.

Defendant was sentenced to the upper term of three years on count 1, doubled under the three strikes law, for a total of six years. He was given one additional year for the prior prison term and a concurrent term of six years on count 2. Defendant received a total sentence of seven years in state prison.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

II

FACTUAL BACKGROUND

A. *People's Case-in-Chief*

On June 26, 2010, California Highway Patrol Officer Jesse Miller was in a marked patrol car on Highway 62 in San Bernardino County using radar to detect speeders. Around 12:45 p.m., he observed a car driving toward him at a high rate of speed. The radar detector showed that the car was moving at 85 miles per hour. The posted speed limit was 65 miles per hour. Officer Miller observed two people in the vehicle. He described the driver as a male, wearing a blue shirt and a baseball cap. He later identified him as defendant. The passenger was a heavy-set woman.

The car slowed down after it passed Officer Miller and pulled over before Officer Miller activated his lights. Officer Miller pulled up behind the car, within 20 feet. Defendant's wife, Linda Buck, exited the passenger side door. Defendant exited the driver's side door and walked to the back of the car toward Officer Miller. Officer Miller stated over the public address system on his vehicle that defendant should stop where he was. Buck was hunched over a bush 10 to 12 feet from the car.

Officer Miller approached defendant and asked, "What's going on?" Defendant responded that he had been driving his wife home when she got sick. Officer Miller advised defendant that he had been driving 85 miles per hour. Defendant denied that he was driving that fast.

Officer Miller smelled alcohol on defendant, but defendant denied that he had been drinking. Defendant was somewhat responsive to the initial questioning but became defensive when Officer Miller asked him whether he had been drinking. Officer Miller noted while speaking with defendant that defendant was swaying to the point that it appeared he might fall over, his speech was slurred, and his eyes were red and watery, all signs that he might be intoxicated.

Officer Miller performed a horizontal gaze nystagmus test, the results of which were consistent with defendant's being intoxicated. Defendant refused to take a preliminary alcohol screening test or any other tests. Buck stood near the car.

Officer Miller arrested defendant for DUI. Defendant told Officer Miller, "You don't got shit on me. You never saw me driving." Defendant did not say he was not driving.

Officer Miller then advised Buck that a tow truck would come to get the car and that another officer, Dennis Carr, would provide her with transportation. Officer Miller asked her why she had not been driving the car, and she responded it was because she was sick.

When Officer Carr arrived at the scene, defendant was agitated and yelling obscenities. He was also yelling that Officer Miller did not see him driving. Defendant did not say that his wife was driving. Officer Carr waited with Buck for the tow truck and drove her to meet someone whom she had called to pick her up. At no time did Buck

tell Officer Carr that she had been driving the car when Officer Miller pulled them over. It did not appear to Officer Carr that Buck had been drinking.

While in the patrol car, Officer Miller advised defendant that he needed to submit to a blood or breath test once they arrived at the highway patrol station. Defendant responded that he did not want to talk to him. During the ride, when Officer Miller reiterated that when they got to jail he would have to take a blood or breath test, he responded, "I'm not taking any test." When Officer Miller advised defendant that they would have to draw his blood even if he did not consent, he responded, "Nobody is taking my blood."

When they arrived at a local jail, Sergeant Karen Barksdale, who was Officer Miller's supervisor, met with Officer Miller and defendant. Another officer, Joan Griffin, was also present. Defendant told Sergeant Barksdale that Officer Miller had stopped him for no reason and that he had just been driving his wife home.

Defendant was advised that he would have to submit to a blood test. Defendant did not consent to the test but advised the officers that he would not resist. Both Sergeant Barksdale and Officer Griffin noted that defendant appeared intoxicated.

At 1:38 p.m., a phlebotomist drew defendant's blood. A test of defendant's blood revealed that he had a blood alcohol content of 0.20 percent. A criminalist testified that, based on his blood alcohol content and the observations by Officer Miller, defendant would have been impaired to drive a car.

Defendant eventually apologized to Officer Miller for the things he had said to him. He told Officer Miller he was just mad because everyone else had been driving as fast as he was when he got pulled over. Defendant never stated during the entire booking process or when he was arrested that Buck had been driving the car.

Four recorded phone calls between defendant and Buck while he was in jail were played for the jury. They discussed during these phone calls that Buck would testify at his trial that she had been driving the car.

B. *Defense*

Buck testified that she had been driving that day. She suffered from kidney disease and had pulled the car over to the side of the road because she felt sick. She left the car to vomit. Defendant returned to the car to get her a towel when Officer Miller pulled up behind the car. Buck claimed Officer Miller approached their car after they had been stopped for about three or four minutes. She heard defendant tell Officer Miller that he had not been driving the car. Officer Miller never asked her if she had been driving.

Buck was afraid to testify because she had a warrant for her arrest for driving on a suspended license. In their jail phone conversations, defendant was encouraging her to come to court to testify because he knew she was afraid. Buck denied that she and defendant had fabricated the story that she had been driving that day.

III

CALCRIM NO. 371

Defendant essentially attacks instruction to the jury with CALCRIM No. 371 on two grounds. He insists the evidence presented in this case did not support the instruction. In addition, he claims that the instruction lowered the People's burden of proof allowing the jury to convict him if they found that both defendant and his wife fabricated evidence.

A. *Additional Factual Background*

At trial, the jurors heard telephone conversations between defendant and Buck while he was in jail. Relevant to the issue here, defendant mentioned several times to Buck that she would testify on his behalf that she had been driving that day. During their first recorded jail conversation, defendant told Buck that he wanted her to be present to talk with his lawyer. During the conversation, defendant said to Buck, "You know, you can just tell him we was on the side of the road and we was gunna switch. You know what I mean. That's it. Cause I don't know if it's gunna work. Cause they gunna be like, why is he lying on you if I was driving, you was driving, whatever. He couldn't see. But we was on the side of the road. That's a good thing. Well anyway, we'll see what's going on."

In the second conversation, Buck asked if defendant had spoken with his lawyer. Defendant responded that he was working on a witness list. He said, "I haven't decided about the driver yet but we will talk to you and do it later."

In a third conversation, they discussed that he had just returned from court. He told Buck, "Oh no. They talking crazy on that deal. So I just told them, we just gunna go to trial. And have you come in and tell them about when you was driving and we gunna get, we was on the side of the road, same thing we told the other guy." Buck responded, "Oh. Ok." Defendant also said to her, "So I told them when you got sick and pulled over and I was on the side with you and that's when, that's when this fool pulled up. So you know what's going on when you talk to him."

Defendant asked Buck if she had received a letter that he wrote her, and she responded that she had not. He told her, "[I]t's important. Cause dude gunna get in touch with you. But we just gunna tell him the same thing we told the paid lawyer. That you was driving and you got sick and pulled over and that's when they got me. I talk to you more about it."

In a final conversation, Buck stated that she had not been contacted by the lawyer's investigator. Defendant said, "Oh. You just want to tell the same story that we told the other lawyer." Defendant told Buck that it was important that she testify and talk to the investigator. Defendant again said to Buck, "Yeah. So basically it's same thing that we told the other court appointed attorney. Is that, you know, how you drove up there and you was driving back, you didn't feel good, and we was on the side of the road, you was throwing up." Buck responded, "Babe, please don't keep talking about it. I know."

The trial court instructed the jury with CALCRIM No. 371 as follows: "If the defendant tried to create false evidence or obtain false testimony, that conduct may show that he was aware of his guilt. If you conclude that the defendant made such an attempt, it is up to you to decide its meaning and importance. However, evidence of such an attempt could not prove guilt by itself. [¶] If someone other than the defendant tried to create false evidence, provide false testimony or conceal or destroy evidence, that conduct may show that the defendant was aware of his guilt, but only if the defendant was present and knew about that conduct or if not present, authorize the other person's actions. It is up to you decide the meaning and importance of this evidence. However, evidence of such conduct cannot . . . prove guilt by itself." Defendant objected to the instruction on the ground that there was no evidence supporting that either defendant or Buck had fabricated evidence. The jury also received other instructions that if they found defendant had made false or misleading statements relating to the charged crime, such statements might show his consciousness of guilt, and the jury could consider them in determining his guilt, but such statements could not prove his guilt by themselves.

B. *Analysis*

CALCRIM No. 371 is properly given where there is some evidence in the record that, if believed by the jury, sufficiently supports an inference of consciousness of guilt. (See *People v. Coffman & Marlow* (2004) 34 Cal.4th 1, 102 [concerning CALJIC Nos.

2.04[2] & 2.06]; see also *People v. Riggs* (2008) 44 Cal.4th 248, 308, fn. 27 [CALCRIM Nos. 2.04 & 371 can be given if the defendant's efforts to fabricate evidence is indicative of his consciousness of guilt].) The instruction makes "clear to the jury that certain types of deceptive or evasive behavior on a defendant's part could indicate consciousness of guilt, while also clarifying that such activity was not of itself sufficient to prove a defendant's guilt, and allowing the jury to determine the weight and significance assigned to such behavior. The cautionary nature of the instructions benefits the defense, admonishing the jury to circumspection regarding evidence that might otherwise be considered decisively inculpatory. [Citations.]" (*People v. Jackson* (1996) 13 Cal.4th 1164, 1224.) Where there is no evidence to support the instruction, "at worst" it is "superfluous," and, where the evidence of guilt is strong, reversal is not warranted. (*People v. Pride* (1992) 3 Cal.4th 195, 248-249; see also *Jackson*, at p. 1225.)

In reviewing the four conversations between defendant and Buck, the evidence reasonably supports that they were fabricating a story. Defendant first stated that he had not "decided" who was driving and would let Buck know. As the trial approached, he became more and more agitated and expressed to Buck that she had to testify on his behalf. The jury could reasonably infer that if Buck had in fact been driving that night,

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[2] CALJIC No. 2.04 (Fall ed. 2006) provided as follows: "If you find that a defendant [attempted to] [or] [did] persuade a witness to testify falsely or [attempted to [or] [did]] fabricate evidence to be produced at the trial, such conduct may be considered by you as a circumstance tending to show a consciousness of guilt. However, such conduct is not sufficient by itself to prove guilt and its weight and significance, if any, are for you to decide."

there would be no need for defendant to continually tell Buck how she should testify. Moreover, on the night of the incident, neither defendant nor Buck stated that she was driving the car. This gives more credence to the People's theory that this was fabricated evidence.

Defendant claims that the evidence should be viewed in the light that defendant was only trying to convince Buck to fix her warrant and testify for him because she was reluctant to testify. Certainly one can argue such interpretation. In fact, defense counsel maintained in closing argument that the discussions between Buck and defendant were because she did not want to come to court to testify. But the evidence also could be interpreted to show that defendant was asking her to fabricate evidence and she agreed. It was up to the jury to decide if the evidence was fabricated based on the language in the instruction.

Defendant alludes to the fact that the instruction is circular, violates the federal Constitution, and creates an improper inference in favor of the People's case. The California Supreme Court has rejected that CALJIC No. 2.04, the predecessor of CALCRIM No. 371, violated due process or invited the jury to draw an irrational inference. (*People v. Morgan* (2007) 42 Cal.4th 593, 621; *People v. Guerra* (2006) 37 Cal.4th 1067, 1137, disapproved on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Defendant also claims that if the jury believed that both defendant and Buck fabricated the story, they could find him guilty, under on the language of CALCRIM No.

371, based on this attempt to fabricate evidence alone. He claims that "[r]ead literally, evidence of only one circumstance 'cannot prove guilt by itself.' But if the jury found both circumstances to have been proven -- then the cautionary admonition did not apply."

Defendant never objected to the instruction below on these grounds and did not seek a modification of the standard instruction. "'Generally, a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language.' [Citation.]" (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011-1012.) If defendant felt that the instruction was erroneous, he should have requested a modification.

"In reviewing a claim that the court's instructions were incorrect or misleading, we inquire whether there is a reasonable likelihood the jury understood the instructions as asserted by the defendant." (*People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.) We consider whether, in the context of the entire charge, there is a reasonable likelihood that the jury misconstrued or misapplied its words. (*People v. Castillo* (1997) 16 Cal.4th 1009, 1016-1017.) It is inconceivable that the jury interpreted the instruction as argued by defendant. To the contrary, they were advised that they could not convict defendant based only on false evidence. They were given an additional instruction (CALCRIM No. 362) regarding false statements and testimony by defendant that advised the jury they had to find evidence other than the false statements in order to convict him. CALCRIM No. 371 was appropriately given in this case.

We also conclude that even if the trial court erred by giving CALCRIM No. 371, any error was harmless. Although defendant claims that his rights to due process and fair trial were implicated, an error in giving instructions is evaluated under *People v. Watson* (1956) 46 Cal.2d 818, 836, that is, reversal is warranted if it appears reasonably probable the defendant would have obtained a more favorable outcome had the error not occurred.

The California Supreme Court has held that "[t]he inference of consciousness of guilt from willful falsehood or fabrication or suppression of evidence is one supported by common sense, which many jurors are likely to indulge even without an instruction." (*People v. Holloway* (2004) 33 Cal.4th 96, 142.) The instruction here admonished the jury that even if they found that defendant had fabricated evidence, they could not convict him on that basis alone. The instruction benefitted defendant by requiring other supporting evidence.

Moreover, there was ample evidence that defendant was driving the car, and only defendant's and Buck's self-serving statements stated otherwise. Officer Miller clearly identified defendant as the driver of the car. Defendant never denied driving on the day he was arrested, he made statements about driving Buck because she was sick, and he told Officer Miller that he was angry that he had been stopped when other drivers were also speeding. Before her trial testimony, Buck had never said she was driving that day. There was no dispute that defendant was under the influence of alcohol. Based on the foregoing, even if the jury had not been instructed with CALCRIM No. 371, the results of the trial would have been the same.

IV

DISCLOSURE OF EVIDENCE BY THE PEOPLE

Defendant contends that the late disclosure of statements by Sergeant Barksdale and Officer Carr impacted his ability to present a defense.

A. *Additional Factual Background*

On November 8, 2010, in a first trial on these charges, defendant moved for a mistrial based on statements made by Officer Miller during trial that were not contained in the police report or disclosed to defendant prior to trial. Defendant also complained about testimony from Sergeant Barksdale and Officer Carr (who had not testified yet but who were on the People's witness list) who did not prepare investigative reports. Defendant understood that all of the statements went to his defense that he was not driving at the time of the incident. The People argued that, at the time Officer Miller wrote his report, he had no idea that the identity of the driver would be an issue in the case. Officer Miller did not emphasize the point in his report as a result.

Further, Officer Miller's report mentioned that Sergeant Barksdale and Officer Griffin were present at the jail when defendant arrived. Their statements about whether defendant denied he was driving that night were not a surprise. The prosecutor maintained that he only became aware of Sergeant Barksdale's statements a few days prior to trial. The trial court believed that there was a violation of section 1054 because not all of the defendant's statements were disclosed to the defense prior to trial. These statements were disclosed after defendant had committed to a no-driving defense.

Officer Miller told things to the prosecutor at the preliminary hearing that were not told to the defense until trial. Since all of the information was not given to defendant, and he had committed to a defense, the trial was deemed fundamentally unfair. A mistrial was declared.

Prior to the instant trial, defendant brought a motion in limine to exclude the evidence that prompted the mistrial in the prior case, except for statements by Officer Miller. The parties then discussed testimony that would be forthcoming from Officer Griffin, Officer Carr, and Sergeant Barksdale. The prosecutor proffered that he had spoken with all three officers that day. He had received a statement from Officer Carr that was disclosed to defense counsel and would not be reduced to writing. Further, the statements of Sergeant Barksdale were sent to defense counsel but no report had been made. Statements by Officer Griffin were only given to defense counsel orally. The trial court recommended that all of the statements be reduced to writing so that neither defense counsel nor the prosecutor became witnesses.

Defense counsel argued that under section 1054.1, he had to be provided with evidence prior to trial. In addition, it was a due process violation. Defense counsel had a "general idea" as to what the statements would be, but he did not have specifics in order to respond to them. He sought to exclude the testimony of all three witnesses in their entirety. The prosecutor disagreed, arguing that section 1054.1 only required disclosure of written or recorded statements. He had provided the statements of the officers to defense counsel in a timely manner.

The trial court denied the motion to exclude without prejudice but stated, "When you get the actual summaries, you could read, and I believe it needs to be readdressed outside the presence of the jury." The prosecutor assured the trial court he would try to get written summaries from the officers to defense counsel as soon as possible.

Sergeant Barksdale testified that she submitted a written report on February 9, 2011. During her testimony, she admitted that she had not written the report until asked to do so by the prosecutor. There was no objection to the summary report. Officer Carr testified that he had written a report a week prior to trial. He did not take any notes at the scene. There was no objection to the summary report or any further objection to the testimony.

B. *Analysis*

Defendant contends that the late disclosure of the testimony of Officer Carr and Sergeant Barksdale violated his federal constitutional rights to due process and to present a defense pursuant to *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215] (*Brady*). "In *Brady* . . . the United States Supreme Court held that a defendant's right to due process is violated when 'favorable' evidence that has been 'suppressed' by the prosecution is 'material' to the issue of guilt or punishment." (*In re Pratt* (1999) 69 Cal.App.4th 1294, 1312.) "The *Brady* disclosure obligation encompasses both impeachment and exculpatory evidence, and exists regardless of whether the defendant makes a specific request for the information." (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1471.) "'Materiality includes consideration of the effect of the

nondisclosure on defense investigations and trial strategies. [Citations.]'" (*People v. Verdugo* (2010) 50 Cal.4th 263, 279.)

Evidence is material under *Brady* if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. (*People v. Hoyos* (2007) 41 Cal.4th 872, 917-918.)

The statements here were disclosed prior to trial. Moreover, the evidence was *inculpatory*, not exculpatory. Additionally, it did not constitute impeachment evidence. There is no indication that Sergeant Barksdale or Officer Carr could be impeached with statements that defendant told them he was not driving or that Buck said that she was driving. Their testimony was entirely consistent. This evidence was not material to the defense. The only defense in this case was that defendant was not driving. Regardless of the statements by Officer Carr or Sergeant Barksdale, he had no choice but to claim he was not driving. Even if the People could be considered to have untimely disclosed this evidence, it was not material. No violation under the federal Constitution occurred in this case.

Moreover, under the state standard of section 1054.1, reversal is not required. The People have a statutory duty pursuant to section 1054.1 to disclose to the defense at least 30 days before trial, or immediately if discovered within 30 days of trial, certain categories of evidence, including all relevant evidence that is "'"in possession of the prosecuting attorney or [known by] the prosecuting attorney . . . to be in the possession of the investigating agencies."'" (*People v. Verdugo, supra*, 50 Cal.4th at pp. 279-280; see

also §§ 1054.1 [listing disclosure requirements]; 1054.7 [setting deadlines on when such information must be disclosed].) If it is shown that any party has failed to comply with the statutory disclosure requirements, the trial court "may make any order necessary" to enforce those provisions, "including, but not limited to, ordering immediate disclosure, [initiating] contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continu[ing] the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure." (§ 1054.5, subd. (b); see also *Verdugo*, at p. 280.)

Here, the People made defendant aware of the statements by Officer Carr and Sergeant Barksdale. The trial court immediately ordered that the statements be reduced to writing and that the writing be given to defense counsel. Defense counsel made no further objection and did not request that the jury be admonished that there was a late disclosure of evidence pursuant to section 1054.5, subdivision (b). Under the circumstances, there were no violations of section 1054.1 et. seq.

Moreover, reversal is required only where it is reasonably probable that absent the disclosure violation the verdict would have been more favorable to the defendant. (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1135, fn. 13, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) As set forth in detail, *ante*, the statements of Officer Carr and Sergeant Barksdale were not favorable to defendant. Further, there is nothing in the record to support that defendant was ineffective in

cross-examining the officers due to what defendant claims was late disclosure. Reversal is not warranted under either the state statute or the federal Constitution.

V

PENAL CODE SECTION 654

Defendant contends that his sentence on count 2, which was ordered to run concurrent to the sentence on count 1, should have been stayed under section 654. The People agree that the sentence should be stayed.

At the time of sentencing, the trial court stated that it was going to run count 2 concurrent to the sentence on count 1. It stated, "[T]hat will run concurrent. I don't think it's 654 because it's different allegations. It's not driving under the influence. Driving with a .08 you don't have to be under the influence. So that whole term will be concurrent . . . ."

Section 654 is applicable where defendant commits multiple crimes as part of an indivisible course of conduct and bars multiple punishment when a defendant is convicted of two or more offenses that are incident to one objective. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507.)

The convictions here were based on a single act of driving. As such, section 654 is applicable. (See *People v. Martinez* (2007) 156 Cal.App.4th 851, 857; see also *People v. Duarte* (1984) 161 Cal.App.3d 438, 447-448.)

VI

DISPOSITION

The judgment is modified to reflect that defendant's six-year sentence on count 2 is stayed. The superior court is directed to amend the minute order from sentencing to reflect the modification and to prepare an amended abstract of judgment to be forwarded to the California Department of Rehabilitation and Corrections. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.